

# Protecting the Rights of Persons With Disabilities as a Constitutional Value

Svetlana M. Kurbatova<sup>1,2\*</sup>, Lev V. Bertovsky<sup>3,4</sup>

<sup>1</sup> Law Institute, Krasnoyarsk State Agrarian University, 660049 Krasnoyarsk, Russia

<sup>2</sup> Siberian Federal University, 660041 Krasnoyarsk, Russia

<sup>3</sup> Institute of Law, Moscow state University, 119991 Moscow, Russia

<sup>4</sup> Moscow Institute of Electronic Technology, 124498 Moscow, Russia

\*Corresponding author. Email: sveta\_kurbatova@mail.ru

## ABSTRACT

The article discusses the concept, essence and main approaches to legal understanding of constitutional values. The importance of constitutional values for the formation of a system of human rights and freedoms, as well as the responsibilities of the state to ensure their implementation are noted. The conclusion is made about the insufficient quantitative and qualitative content of the concept of constitutional values due to the fact that there is a relationship between the constitutional values and the evolutionary development of society and the state, where the second affects the first and vice versa. In particular, we are talking about protecting the rights of persons with cognitive disabilities. At the general constitutional level, there are no norms reflecting the value of the significance of this category of the population. As a result, there is a problem with the possibility of exercising their rights at the sectoral level, in particular, in the field of criminal proceedings.

**Keywords:** *constitutional values, human rights and freedoms, limited cognitive abilities, criminal proceedings*

## 1. INTRODUCTION

The concept of "values" is universal, having philosophical, sociological and legal aspects, it covers all areas and levels of social life [1], while the values themselves are associated with cognitive, creative and practical activities mediated by volitional decisions [2].

Despite the fact that the category of "value" in jurisprudence does not have its own normative definition, it is widely used in the theory of law and especially in the interpretation of constitutional norms, which is natural, since constitutional provisions, possessing supremacy and supreme legal force, are implemented further in lawmaking and law enforcement activities in general [3]. Scientific works about constitutional values being ideological foundations of the constitution itself appeared in the 1930s [4], having found its development in the works of famous international scientists from Germany [5], the US [6–8] and other countries, as well in the studies of some Russian authors [9–11].

However, there are still many issues regarding this category, while the evolution of society and the state, and with it the ideas about a person, their rights and freedoms, contributed to the formulation of new issues, in particular, about the reflection in the content of constitutional values of the protection of the rights of persons with limited cognitive abilities.

## 2. APPROACHES TO THE LEGAL UNDERSTANDING OF CONSTITUTIONAL VALUES

There are a number of approaches to legal understanding of the essence of constitutional values.

### 2.1. Historical approach

Constitutional values were viewed as the basis of social and state development, a phenomenon capable of uniting the whole society around itself and filling the national legal system with content [12]. This approach reveals the genesis of this concept, which reflects the views that existed in society and the state in a specific historical period.

### 2.2. Extralegal approach

Constitutional values are "extralegal category" with a dual nature. On the one hand, the category of constitutional values is a category of morality, and in this sense, it can be presented as "the quintessence of the spirit of the Constitution", while on the other hand it "has the form of its political and legal existence, general principles of law, constitutional principles, declarations, constitutional presumptions" [13].

### **2.3. Instrumental approach**

Constitutional values are a tool with the help of which the normative control activities of the bodies of constitutional control are carried out. This is a manifestation of the understanding of the constitution as a means of ensuring the development of the democratic process [14, 15], where constitutional values act as its means by which they are implemented in specific spheres of society and the state.

### **2.4. Hierarchic approach**

This approach is based on identifying the values of two hierarchies: vertical and horizontal [16, 17], where at each of the vertical levels there is its own additional horizontal hierarchy of constitutional values [18]. And each value can be described in terms of height—its place in the vertical hierarchy of values—and strength—its place in the horizontal hierarchy of values.

### **2.5. Axiological approach**

This approach is most widespread, since it is more in line with the spirit of the ideas that have received their development in the modern world. This is a system-value approach that, through the prism of modern fundamental ideas, emphasizes the importance of a person in society. According to it, constitutional values are a complex constitutional-doctrinal, legal-logical and normative construction that arises as a result of the implementation of the axiological function of the constitution [19], an indicator of the reality of the system of constitutionalism [20]. This approach was embodied in the provisions of the Universal Declaration of Human Rights, which proclaimed a person, their rights and freedoms as the highest value, as well as other legal acts of the international level, and was concretized in the national legislation of individual states.

## **3. ESSENCE AND SIGNIFICANCE OF CONSTITUTIONAL VALUES**

"Value" is a special social phenomenon of positive significance in the system of social and historical activities of people [21]. Constitutional values have social values as their primary basis, as the embodiment of interrelated relations of the individual, society, state, ensuring the humanity of these relations [22].

Human and civil rights and freedoms, justice and equality, rule of law and constitutional legality, legal, democratic, federal and social state—these are the most important components of the foundations of the constitutional system and at the same time enduring constitutional values. Their protection and strengthening are an urgent task of the Russian state and society as a whole [23]. Constitutional norms and rules should serve the interests of a person and a citizen" [24];

Thus, constitutional values are ideas, ideals, guidelines that have a positive significance for the entire people and are the basis of the entire legal system, social and state development. They can be expressed both in abstract, non-formalized constitutional principles, and enshrined in the Constitution [25].

For modern Russia (as well as for many other states), the presence of constitutional values is of primary importance, since they:

- unite those belonging to different social, age, professional, religious and other groups of citizens [26];
- influence the formation and content of the norms of specific legal institutions of certain branches of law;
- determine further trends in the development of legal regulation; etc.

## **4. IMPLEMENTATION OF CONSTITUTIONAL VALUES IN THE BRANCHES OF LAW (ON THE EXAMPLE OF CRIMINAL PROCEDURAL LAW)**

It is the rights and freedoms of man and citizen, guarantees of their implementation, security and protection that are core and "cross-cutting" for constitutional and legal research. At the same time, constitutional and legal research should not compete with a sectoral, detailed consideration of the relevant law and methods of its protection (for example, criminal law protection of rights and freedoms, environmental human rights and the mechanism for their protection), but set them a value-orienting and normative vector constitutionally understanding this right.

The essence of this understanding, by virtue of the provisions enshrined in Articles 2, 6, 17, 18 and 19 of the Constitution of the Russian Federation, consists in the recognition of human and civil rights and freedoms as the highest constitutional value that determines the meaning, content and application of laws, the activities of all branches of state authorities, local governments [27].

It is the system of constitutional values that determines the content of the relationship between the population and the state, between human rights and freedoms and the duties of the state, which is facilitated by the dogmas of legality, legal equality and social justice. However, one should understand the significance of the evolutionary processes taking place in society and the state in certain historical periods, thanks to which the development of scientific concepts about man and related categories occurs. One such example is the change in the understanding of the social essence of the state and the change in ideas about the tasks of a social state, the format of which is enshrined in the highest normative legal acts of many modern states, including Russia (Article 7 of the Constitution of the Russian Federation).

The welfare state is no longer only a state that is obliged to take care of its population in a narrow, literal understanding of the social function as social security reduced to the provision of a certain type and amount of

social services, but as a state that provides an opportunity for its entire population to exercise rights and be an active member of society (despite the fact that, in turn, these persons fulfill their obligations to the state, which eliminates the option of dependency, but strengthens the format of interaction and feedback between them). And here we see the word "entire" as the key word. Despite the fact that the authors proceed from a certain conventionality of this category, since in reality the entire population cannot be a participant in all relations for various reasons. And one of these reasons is the inability to do this as a result of their disabilities.

At present, social security of certain categories of the population (families, mothers-fathers, the disabled, the elderly in Article 7 of the Constitution of the Russian Federation, children, family in Article 38 of the Constitution of the Russian Federation, etc.) is considered as a constitutional value in the event of socially significant circumstances (age, illness, disability, loss of a breadwinner, raising children and in other cases established by law in Article 39 of the Constitution of the Russian Federation, etc.), which have legal significance, but this is a narrowed approach that does not meet today's needs [28]. Despite the fact that the Constitution of the Russian Federation lacks both the concept and the content of social security, and, more importantly, the rights of citizens to social security [29].

This is one of the reasons for the issue of reflecting the essence of the social state through the prism of constitutional values to be more broadly formulated and considered.

1. Social security should not be interpreted only in a narrow way. Despite the fact that it, as such, is undoubtedly necessary, it is important at the national level to expand the changes in the essential characteristics of the welfare state, which are already reflected not only in the scientific works of scientists, but also in the norms of international law, which is a benchmark for national law [30].

2. It is necessary to expand the category of persons who should be subject to the social function of the state, providing them with the opportunity to exercise their rights, and—as a consequence—the principles of equality and justice. Moreover, if a person, for any reason, cannot fully realize their legal status as a participant in one or another legal relationship, then additional legal regulators provided by the state should be included to ensure the full participation of this person in these legal relationships. Social concern on the part of the state should be expressed, among other things, in the adoption of compensation norms that guarantee the full participation of such entities. And we are talking not only about the disabled, which is typical for states with a traditional, outdated understanding of the social state, but also about other categories of persons.

Given that these states are also characterized by the fact that the concept of a disabled person is also considered in an outdated sense, from the point of view of medical indicators (as at present in Russia), while with the adoption in 2006 of the UN Convention on the Rights of Persons

with Disabilities, firstly, the term "invalid", as degrading human dignity, is not recommended for use in national legislation. Secondly, the very concept of this category has been expanded: now it includes medical, social and philosophical aspects, for example, children, the elderly, persons suffering from mental and physical illnesses, being in stressful situations, etc. Thirdly, the provisions of the Convention require the participating states to implement measures to enable persons with disabilities to achieve and maintain maximum independence, exercise physical, mental, social and professional abilities and fully include and involve them in all aspects of the society [31].

The category of elderly people turned out to be completely excluded from the constitutional value groups: apart from vague mentions without specifics of legal situations with their participation and guarantees in Art. 7 of the Constitution of the Russian Federation, they are no longer mentioned in its norms. But not only does the level of cognitive abilities decrease by old age. According to statistics of Rosstat<sup>1</sup>, in the Russian Federation, out of 146.9 million people, every fourth (37.3 million people) is older than the working age, which is 25,4% of the entire population of the country. And the fact that the state provides the elderly with pensions and medical services (which most of them have earned on their own in the course of their work) does not solve the problem of ensuring their participation as subjects of legal relations in other spheres.

3. The lack of a legal message in the constitutional and legal norms affects the provisions of certain branches of law. For example, the civil law of the Russian Federation enshrines the institutions of legal capacity, mental capacity, deprivation, restriction and "incomplete" (due to juvenile age) mental capacity (Articles 17, 18, 21, 26, etc. of the Civil Code of the Russian Federation). And, for example, such institutions are absent in the Criminal Procedure Code of the Russian Federation (CPC RF). Also, there is no full-fledged concept that determines the basis for the formation of the content of the legal status of participants in criminal proceedings and general aspects of the participation of persons in criminal proceedings, including taking into account the peculiarities of the limited capabilities of certain categories of such participants for the full exercise of their rights and obligations [32].

For instance, the provisions of the CPC RF quite completely (but does not mean that it is qualitatively) fix the peculiarities of criminal proceedings against juvenile suspects and accused; the peculiarities of the participation of juvenile victims and witnesses are partially reflected (Chapter 50, Art. 151 and other of the CPC RF), which is the result of the recognition by the legislator of their limited cognitive abilities at the international level [33, 34], while the category of the elderly with a pronounced state of dementia has undeservedly dropped out of the legislators' field of vision. Although, due to the comparison of the processes of growth and decline in the activity of the cognitive functions of the human brain, it

<sup>1</sup> Retrieved from: <https://www.gks.ru/>

would be logical to endow elderly participants in criminal proceedings with signs of dementia with guarantees of the legal status of minors—the obligatory participation of a defender, the presence of a psychologist, etc.

The criminal procedural legislation provides for the application of compulsory medical measures to persons who have committed socially dangerous acts in a state of insanity, and to persons who, after committing a crime, have a mental disorder that makes it impossible to impose punishment or its execution. But there are no norms regulating the participation of persons with mental (and, as a consequence, cognitive) disorders, acting as victims, witnesses, attesting witnesses, etc.

4. The general criterion for endowing the participants in criminal procedural relations with a special status that stipulates the consolidation of additional rights and the provision of legal guarantees is the level of their cognitive abilities, determined by the level of functioning of their cognitive functions. Given that the cognitive functions of the brain, inherent only in humans, determine the possibility of their participation in social (including legal) relations and include attention, thinking, memory, speech, gnosis, praxis, etc. Accordingly, first of all, the state of these functions, and not the procedural status of a participant in criminal proceedings, should determine the provision of additional guarantees to such persons [35] ensuring the proper implementation of their legal status as such a participant.

## 5. CONCLUSIONS

Thus, we consider it necessary to implement the following:

1. To expand the content of constitutional values to include in them the interests of persons with cognitive disabilities

2. Under this category we propose to understand persons who have limited abilities of their cognitive functions as a result of:

- subjective factors (diseases, trauma, genetic or acquired defects of organs and (or) physiological processes);
- objective factors (age, the impact of the external environment, environment, problems of marriage, family, work, etc.).

3. We propose the use of the concept of "cognitive abilities" as a criterion for determining the degree of real possibility for the subject of a legal relationship to exercise their rights and obligations, and, as a consequence, referring persons with limited cognitive abilities to the category of citizens in need of special protection from the state, which would correspond to modern ideas about the social essence of the state.

4. To impose on the state the obligation to ensure the rights and legitimate interests of persons from this category in criminal proceedings through the use of a cognitive approach when regulating the legal statuses of its participants.

5. Introduce the institution of criminal procedural capacity into the norms of criminal procedural legislation, as well as prescribe the grounds for its restriction, among which we propose to include the impossibility of exercising their

rights and fulfilling obligations by participants with disabilities, including limited cognitive abilities, followed by providing them with additional procedural guarantees, for example, the participation of a legal representative, a psychologist, the possibility of remote participation, using information technologies, etc.

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